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SEP 25 2006

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	:	CASE NUMBER
	:	
CYNTHIA NEVELS,	:	06-71129-MGD
	:	
Debtor.	:	CHAPTER 7

**ORDER DENYING DEBTOR'S APPLICATION  
FOR WAIVER OF THE CHAPTER 7 FILING FEE**

This case came before the Court on Debtor's Application for Waiver of the Chapter 7 Filing Fee ("Application"). (Docket No. 4). Upon consideration of Debtor's Application for Waiver of the Chapter 7 Filing Fee, and for the reasons set forth below, Debtor's Application is **DENIED**.

Debtor's Application states that her family size is twenty-five (25), however, Schedule I, filed with Debtor's Chapter 7 petition on September 8, 2006, indicates that Debtor is single and has one dependent child; the Court has analyzed Debtor's Application based on Debtor having a family size of two (2). To be eligible for a waiver of the Chapter 7 filing fee under 28 U.S.C. § 1930(f), Debtor's annual income must be less than \$19,800, which is 150% of the official poverty line for a family of 2.<sup>1</sup>

While Debtor's Application and Schedules indicate that she has a total combined monthly income of \$540 per month, Debtor's pay advices indicate otherwise. On Schedule I, Debtor indicates that her monthly gross wages are \$1092, with payroll taxes of \$297 and other deductions totaling \$255, for a monthly net income of \$540. These figures are inconsistent with the Pay Advices filed by Debtor on September 12, 2006, (Docket No. 7), which consist of earnings statements dated 07/14/2006, 07/28/2006, 08/25/2006, and 09/08/2006 that were issued by Cardiovascular Group, P.C., the employer Debtor lists on

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<sup>1</sup> The official poverty line, set by the United States Department of Health and Human Services, applicable to a family of 2 is \$13,200. Available at <http://www.aspe.hhs.gov/poverty/06poverty.shtml>.

Schedule I. Due to the conflicting information Debtor has supplied to the Court,<sup>2</sup> the Court considers Debtor's Pay Advices to be the most reliable source of information regarding Debtor's income.

Debtor's Pay Advices reveal that Debtor is paid every 2 weeks and her pay varies slightly during each pay period based on the number of hours worked. Based on the four earnings statements provided, Debtor's average pay per period is \$1146.98, gross, and \$874.25 after the deduction of taxes. Debtor's average take-home pay is \$817.85 per pay period, which accounts for the deduction of taxes and voluntary contributions to various benefit plans. Extrapolated over one year, these figures indicate that Debtor has an annual gross income of \$29,821.48, annual after-tax income of \$22,730.44, and annual take-home pay of \$21,264.10.<sup>3</sup>

The Judicial Conference Procedures Regarding Fee Waivers in Chapter 7 cases do not define whether the income which is to be compared to the poverty level is before tax income or after tax income. Given the purpose of the fee waiver, after-tax income seems the most appropriate standard since only after-tax income is available to the Debtor to pay the filing fee. According to the figures calculated using Debtor's Pay Advices, Debtor's annual after-tax income is almost \$3000.00 higher than 150% of the official poverty line for a family of 2. Even Debtor's actual take-home income, accounting for tax and non-tax related deductions including dental and disability insurance, 401K contributions, and flexible spending account contributions, exceeds 150% of the official poverty line for a family of 2.

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<sup>2</sup> In addition to the inconsistencies between Debtor's Schedules and Pay Advices, Debtor's Statement of Financial Affairs, Question One, indicates that Debtor receives no income from employment.

<sup>3</sup> Though not exact, given slight fluctuations in the hours worked by Debtor each pay period, these figures are substantially consistent with the year-to-date figures on Debtor's earnings statements. Debtor's most recent earnings statement, dated September 8, 2006, indicates year-to-date gross earnings of \$20,572.23.

Considering the totality of the circumstances, the Court finds that Debtor does not meet the fee waiver eligibility requirements set forth in 28 U.S.C. § 1930(f) and has failed to meet her burden of demonstrating that her Application should be granted. Accordingly, it is

**ORDERED** that the application is **DENIED**; however, to allow Debtor an opportunity to pay the filing fee, it is further

**ORDERED** that Debtor shall either (1) pay the Chapter 7 filing fee in full (\$299) within ten (10) days of the date of the entry of this Order, or (2) begin making installment payments as follows:

\$ 75.00 on or before 10 days from the date of the entry of this Order.

\$ 75.00 on or before 40 days from the date of the entry of this Order.

\$ 75.00 on or before 80 days from the date of the entry of this Order.

\$ 74.00 on or before 120 days from the date of the entry of this Order.

If Debtor fails to timely pay the filing fee as set forth above, this case will stand as dismissed.

**SO ORDERED** this the 22<sup>nd</sup> day of September, 2006.

*Mary Grace Diehl*  
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MARY GRACE DIEHL  
UNITED STATES BANKRUPTCY JUDGE